

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

D. DEV MONGA : CIVIL ACTION
 :
 v. :
 :
 JOHN C. OTTENBERG, et al. : NO. 95-5235

MEMORANDUM and ORDER

Hutton, J. February , 2001

Presently before this Court are Motion of Vanguard and IFTC to Dismiss This Action with Prejudice (Docket No. 70), Motion of Founders Funds to Dismiss with Prejudice (Docket No. 72), Plaintiff's Corrected Memorandum in Opposition to Vanguard's, IFTC's and Founders Motions to Dismiss (Docket No. 87), Reply Brief of Vanguard and IFTC in Support of Their Motion to Dismiss this Action with Prejudice (Docket No. 88), Reply of Founders Funds, Inc. in Support of its Motion to Dismiss this Action with Prejudice (Docket No. 89) and Plaintiff's Opposition to New Material Inappropriately Submitted by Vanguard and IFTC in their Reply Brief, and Plaintiff's Response to Misstatements of Fact and Law (Docket No. 90). For the following reasons, Defendants' Motions are **GRANTED** and this action is **dismissed with prejudice**.

STANDARD OF REVIEW

When considering a motion to dismiss a complaint for failure

to state a claim under Rule 12(b)(6)¹, this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved." *Markowitz v. Northeast Land Co.*, 906 F.2d 100, 103 (3d Cir. 1990) (citing *Ransom v. Marrazzo*, 848 F.2d 398, 401 (3d Cir. 1988)); see also *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 249-50 (1989). A court will only dismiss a complaint if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *H.J. Inc.*, 492 U.S. at 249-50. Nevertheless, a court need not credit a plaintiff's "bald assertions" or "legal conclusions" when deciding a motion to dismiss. See *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997). The Federal Rules of Civil Procedure do not, however, require detailed pleading of the facts on which a claim is based. Instead, all that is required is "a short and plain statement of the claim showing that the pleader is entitled to relief," enough to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." FED. R.

¹ Rule 12(b)(6) provides that "[e]very defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted" FED. R. CIV. P. 12(b)(6).

Civ. P. 8(a)(2) (West 2000).

DISCUSSION

This action was commenced by D. Dev Monga ("Monga") on November 25, 1995. It is the third action filed arising from the same dispute between Monga and a receiver appointed by the Massachusetts Superior Court, John C. Ottenberg ("Ottenberg"), concerning the collection by Ottenberg of Monga's assets for distribution to judgment creditors and his now defunct corporation. See Massachusetts Superior Court Civil Action No. 89-2951. Among the assets in dispute are certain roll over Individual Retirement Accounts with Founders Funds, Inc., of which Vanguard and IFTC are the respective custodians. The action in the above captioned case, a second action also filed in the Eastern District of Pennsylvania (Civil Action No. 95-6637) and the Massachusetts Superior Court action all arose from the same factual background and raised essentially the same issues.

The Eastern District of Pennsylvania Action No. 95-6637 was dismissed on April 18, 1996 by the Honorable James T. Giles. In March of 1996, Monga was diagnosed with cancer. As a result of Monga's illness, all proceedings in the instant action were stayed and this case was placed in the Suspense Docket on June 13, 1996. See Order entered June 13, 1996. Monga died on August 23, 1996. Since then, his widow and the executrix of his estate, Shantee Maharaj ("Maharaj"), has pursued the Massachusetts litigation.

On August 1, 2000 the Massachusetts Superior Court entered its Judgment on the Receivership, distributing the receivership estate among Monga's creditors and discharging Ottenberg as Receiver. See Judgment on Receivership, entered August 1, 2000.

During a recent hearing before the Massachusetts Superior Court, Ms. Maharaj stated her understanding that the "complaint [in the Pennsylvania action] was . . . voluntarily dismissed in 1998 . . ." and that "litigation in other jurisdictions [had been] barred [by the Massachusetts Superior Court]" See Transcript of excerpt from hearing held on June 22, 2000, at pp. 1-19, 1-21.

In addition, Ms. Maharaj has been "permanently enjoined" by the Massachusetts Superior Court "from instituting or prosecuting against Vanguard, IFTC, or any of them, any proceeding in any state or United States court or administrative tribunal regarding the Monga IRA Accounts." See Memorandum of Decision and Orders on Pending Motions, October 8, 1998, at 19. Also, in that same Order of the Massachusetts Superior Court, Ms. Maharaj was "permanently enjoined from instituting or prosecuting against Founders Funds, Inc., any proceeding in any state or United States court or administrative tribunal regarding the Monga IRA Accounts." See *id.*, at 20.

Accepting all facts and all reasonable inferences in Plaintiff's Complaint as true, the Court holds that Plaintiff is

not entitled to relief.

An appropriate Order follows.

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O R D E R

AND NOW, this day of February, 2001, upon consideration of Motion of Vanguard and IFTC to Dismiss This Action with Prejudice (Docket No. 70), Motion of Founders Funds to Dismiss with Prejudice (Docket No. 72), Plaintiff's Corrected Memorandum in Opposition to Vanguard's, IFTC's and Founders Motions to Dismiss (Docket No. 87), Reply Brief of Vanguard and IFTC in Support of Their Motion to Dismiss this Action with Prejudice (Docket No. 88), Reply of Founders Funds, Inc. in Support of its Motion to Dismiss this Action with Prejudice (Docket No. 89) and Plaintiff's Opposition to New Material Inappropriately Submitted by Vanguard and IFTC in their Reply Brief, and Plaintiff's Response to Misstatements of Fact and Law (Docket No. 90) IT IS HEREBY ORDERED that said Motions are **GRANTED** and this action is **dismissed with prejudice**.

BY THE COURT:

HERBERT J. HUTTON, J.